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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,571	01/27/2004	Thomas C. Welty	1657.63US02	8124
24113	7590	06/08/2005	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			SEMUNEGUS, LULIT	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/765,571

Applicant(s)

WELTY ET AL.

Examiner

Lulit Semunegus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to a non-lethal nose cone, classified in class 102, subclass 517.
  - II. Claims 8-17, drawn to a projectile comprising a nose cone, classified in class 244, subclass 119.
  - III. Claims 18-24, drawn to method for delivering a non-lethal payload, classified in class 244, subclass 13.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the projectile can comprise of a nose cone without a continuous radius and an internal projection surface without a circular cross-section. The subcombination has separate utility such as lightweight nose cone for high-speed missiles or reentry vehicles.

Inventions I/II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the nose cone or projectile comprising the nose cone can be used for missiles or reentry vehicles.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. If invention I is elected, applicant is further required under 35 USC 121 to elect one of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claims is finally held to be allowable. Currently, claim 1 is generic.

Applicant is required to elect either,

- a. the embodiment (claim 3) wherein the plurality of designed failure areas are grooves.
- b. the embodiment (claim 6) wherein the plurality of designed failure areas are defined by composite fibers.

If species a above is elected, applicant is further required to elect,

- a1. the embodiment (claim 4) wherein the plurality of grooves are present on an external face of the nose cone body.
- a2. the embodiment (claim 5) wherein the plurality of grooves are present on an internal face of the nose cone body.

3. If invention II is elected, applicant is further required under 35 USC 121 to elect one of the following disclosed species for prosecution on the merits to which the claims

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shall be restricted if no generic claims is finally held to be allowable. Currently, claim 8 is generic.

Applicant is required to elect either,

- c. the embodiment (claim 11) wherein the plurality of seams are grooves.
- d. the embodiment (claim 14) wherein the plurality of seams are defined by composite fibers.

If species c above is elected, applicant is further required to elect,

- c1. the embodiment (claim 12) wherein the plurality of grooves are present on an external face of the nose cone body.
- c2. the embodiment (claim 13) wherein the plurality of grooves are present on an internal face of the nose cone body.

Applicant is further required to elect either,

- e. The embodiment (claim 16) wherein the kinetic energy reduction system includes a plurality of deployable wings.
- f. The embodiment (claim 17) wherein the kinetic energy reduction system includes a parachute.

4. If invention III is elected, applicant is further required under 35 USC 121 to elect one of the following disclosed species for persecution on the merits to which the claims shall be restricted if no generic claims is finally held to be allowable. Currently, claim 18 is generic.

- g. the embodiment (claim 20) wherein the plurality of designed failure areas are grooves.

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h. the embodiment (claim 23) wherein the plurality of designed failure areas are defined by composite fibers.

If species g above is elected, applicant is further required to elect,

g1. the embodiment (claim 21) wherein the plurality of grooves are present on an external face of the nose cone body.

g2. the embodiment (claim 22) wherein the plurality of grooves are present on an internal face of the nose cone body.

Applicant is advised that a reply to these requirements must include an identification of the species that is elected consonant with this requirement, and a listing all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in depend form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02 (a).

Should applicant traverse on the ground that the species are not patent ably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. A telephone call was made to with Tom Dickson on 5/27/2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lulit Semunegus whose telephone number is (571) 272-6882. The examiner can normally be reached on Mon-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (571) 272-6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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6/1/2005

Lulit Semunegus  
Examiner  
Art Unit 3641



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER